IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISCELLANEOUS PETITION NO.4 OF 2002

SICOM LIMITED ..Petitioner

V/s.

Jagjivandas Shandilya & Anr. ..Respondent

Mr.V.R.Dhond with Mr.K.G.Desai i/b Kartikaya & Associates for the Petitioner.

Mr.D.V.Merchant i/b Pragna Thakkar & Associates for the Respondent.

CORAM: S.U.KAMDAR, J.

DATE : 17th June, 2005.

ORAL JUDGMENT:

1. Present petition has been filed by the Petitioner under sec.31(1)(aa) of the State Financial Corporation Act, 1951 for enforcement of guarantee against the respondent.

2. Some of the material facts of the present case are briefly enumerated as under:

3. The company known as Sewa Medicals Limited,was incorporated interalia for carrying on business for the manufacture of pre-filled syringes and I.V.Cannul. The company proposed to set up a unit at Village Markal, Alandi Markal Road, Taluka Khed, District Pune, in the state of Maharashtra. The company for the aforesaid purpose sought financial assistance of Rs.1,50,00,000/- to part finance the cost of the project. On 22nd July, 1996, an agreement was executed between the said company and the petitioner. Terms and conditions of the said loan agreement interalia , provided that the said loan will be repaid with interest in instalments as set out therein.

4. On 22nd July, 1996 a Deed of Hypothecation was executed by the Company in favour of the petitioner, interalia, creating a first charge by way of Hypothecation in respect of the company’s plant and machinery, machinery spares, tools and accessories,

stores and spares, etc. The company also created Equitable Mortgage by deposit of title deeds in favour of the Petitioner of all its assets situated at Village :Markal, Alandi Markal Road, Taluka Khed, District Pune. On 22nd July, 1996,the Respondent herein alongwith one Jagjivandas Shandilya, executed two Deeds of Guarantee in favour of the Petitioner, interalia, promising to pay the amount of loan lent and advanced to said principal borrower Company, if the said borrower commits default in repayment of the said amount. In view of the fact that Jagjivandas Shandilya expired, the Petitioner have deleted the said Respondent no.1 from the present petition and thus, present petition is pressed only against the son, Kirit Shandilya the 2nd respondent for the recovery of the aforesaid amount.

5. It seems that said borrower company commited defaults in repayment of instalments of principal and payment of interest, and therefore, three notices being dated 23rd OCtober, 1997, 19th March, 1998 and 23rd November were issued. The Petitioner Company recalled entire loan amount outstanding as due

and payable by the Borrower to the Petitioner Company alongwith the overdue interest by the aforesaid three notices. However, in spite of the said notices, Principal Borrower having failed to make payment, the Petitioner invoked the said guarantee by issuing Demand Notice dated 13th March, 2001 and called upon the respondents as the guarantors to make repayment of the aforesaid amount. According to the Petitioner as on 31/10/01, amount due and payable by the Respondent under the said Deed of Guarantee with interest on the Principal amount was Rs.3,51,23,381/-. In view of the fact that the Respondents, in spite of invokation of Guarantee, did not make payment of the aforesaid amount, the present Petition has been filed u/sec.31 (1)(aa) of the State Financial Corporation Act for recovery of the said amount.

6. The Respondents are served. The Respondent has not filed any reply to the present Petition.The Petitioner has filed an additional affidavit dated 16/3/05 setting out therewith revised Statement of Claim in the light of judgment of Apex Court in the case of Central Bank of India Versus Ravindran &

Others reported in 2000(1) SCC 367 and has claimed that the Respondents are indebted to the Petitioner for the sum of Rs.87,93,292 as on 31.10.01. The only contention raised by the Learned Counsel appearing for the Respondent is that the Borrower Company, M/s. Sewa Medical Limited is under BIFR and in view of provisions of Sec.22 of Sick Industrial Companies, (Special Provisions) Act, 1985, the present petition should not be proceeded with. He has relied upon judgment of Apex Court in the case of Maharashtra Tubes Limited Versus State Industrial & Investment Corporation of Maharashtra LTD. And Another reported in (1993)2 Supreme Court Cases 144. It has been contended that in view of the aforesaid judgment of Apex Court, Court can not proceeded also as against the guarantors also can not be proceeded with in view of S.22 of SICA.

7. I have considered aforesaid contention at length and in my judgment in Miscellaneous Petition 56 to 61 in the case of SICOM LIMITED V/s. Shri Prabhudayal B. Chamria decided by me on 25/4/2005, I have held that the provisions of S.22 does not apply to the

proceedings initiated u.sec.31(1)(aa) which is for the enforcement of a guarantee by the Petitioner. In the aforesaid judgment I have held that as far as guarantors are concerned the provisions of S.22 of SICA only offers a limited protection i.e. as against filing of the suit and there is no omnipotent protection available against all proceedings. I have held that the present proceeding not being in the nature of suit, provision of S.22 has no application thereto. In view of my earlier judgment ,I am unable to accept the contention of the Learned Counsel for the Respondents. In so far as merits of claim is concerned, there is no defence raised in the present petition, in view, thereto, I pass the following order:

ORDER

1. The Respondent shall pay to the Petitioner a sum of Rs.1,87,93,292/- with further interest at the rate of 12 % p.a. from the date of filing of the petition till the payment and/or realisation.

Judge.